

STATE OF ILLINOIS)
)
 COUNTY OF ROCK ISLAND)
)
 CITY OF ROCK ISLAND, ILLINOIS)
 a Municipal Corporation,)
)
 Petitioner,)
)
 vs.)
)
 THE BURLINGTON NORTHERN AND)
 SANTA FE RAILWAY COMPANY A/K/A)
 BURLINGTON NORTHERN RAILROAD)
 COMPANY,)
)
 Respondents.)

BEFORE THE ILLINOIS
COMMERCE COMMISSION

T02-0114

RECEIVED
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Illinois Commerce Commission
RAIL SAFETY SECTION

**PETITION FOR AN ORDER GRANTING PERMISSION TO BUILD A
 PEDESTRIAN WALKWAY ACROSS A RAILROAD TRACK
 AND FOR AN ORDER APPROVING CONDEMNATION OF REAL ESTATE**

NOW COMES the CITY OF ROCK ISLAND, a Municipal Corporation, by its Attorneys,
 Konecky, Koenig, Kutsunis & Weng, and for Count I of its petition as above described states as
 follows:

1. That Petitioner is a Municipal Corporation through whose boundaries pass the track of
 The Burlington Northern and Santa Fe Railway Company.
2. That Petitioner brings this petition pursuant to 625 ILCS 5/18c-7401.
3. That Petitioner has caused to be built, in conjunction with others, a botanical center, a
 picture of which is attached and marked Exhibit "A", being an indoor garden facility with
 meeting rooms, on premises south of and abutting the right-of-way and track of the
 Respondents herein ("right-of-way").
4. As a part of the botanical center facilities, Petitioner will be constructing an outdoor
 garden on premises located immediately north of the right-of-way.

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5. Said right-of-way separates the botanical center facility from the outdoor garden, as is shown on the diagram marked Exhibit "B" and made a part hereof.
6. The outdoor garden area is an integral part of the botanical center.
7. In order for visitors and employees at the botanical center to have access to the outdoor garden, it is necessary to build a pedestrian path having an approximate width of ten feet with a one foot shoulder across the existing trackage of the Respondents herein.
8. The pedestrian pathway across the trackage is also necessary so that bicycles may gain access from the botanical center to the bike path, adjacent to the outdoor garden. This bike path extends from Savannah, Illinois to Rock Island, Illinois, a distance of approximately sixty-five (65) miles.
9. Said pedestrian path will be built at the expense of Petitioner herein and with any available funding for any part thereof, according to all appropriate standards of the Federal Railroad Administration and the safety standards of this Commission.
10. Respondent has declined consent to build pedestrian walkway for no reason other than that there is a nationwide effort to reduce the number of railway crossings and that a new crossing cannot be had without closing an older crossing. No crossing is available for closing in Rock Island. One crossing was closed approximately fourteen (14) years ago.
11. The proximity to the Mississippi River and the large amount of land necessary for construction of a tunnel makes building a tunnel under the railway impractical. Further, such tunnel would be susceptible to storm water and ground water runoff and would have to be pumped to remain a usable access.
12. Building an overpass, the suggestion of the Railroad, would also be impractical because an overpass would be unduly dangerous and not able to be built in the space available.

An overpass is also impractical because the Americans with Disabilities Act, 42 U.S.C. §12101, et seq., would require the bridge to be built on more land than is available.

13. Construction of the pedestrian walkway will not pose a safety hazard to the pedestrians on the walkway because rail traffic on the trackway is minimal; approximately one train per day.
14. Petitioner agrees to comply with all applicable rulings, rules and regulations of this Commission and all other relevant laws in the construction, operation and maintenance of the pedestrian walkway.

WHEREFORE, Petitioner requests the following relief:

1. The Commission set a hearing upon this petition with notice.
2. Permission to build a pedestrian walkway twelve (12) feet in width across and over Respondent's right-of-way at the location shown in Exhibit "B".
3. Apportionment of the costs of said walkway as determined by the Commission.
4. Entry of an order requiring Respondent to install automatic protection devices with available funding for grade crossing protection devices at the walkway to protect users thereof from potential injury by oncoming trains.
5. Such other and further relief as may deemed appropriate.

COUNT II

NOW COMES the CITY OF ROCK ISLAND, a Municipal Corporation, by its Attorneys, Konecky, Koenig, Kutsunis & Weng, and for Count II of its petition as above described states as follows:

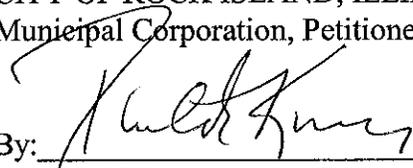
1. Petitioner is a home-rule city having the power of condemnation.

2. Petitioner seeks to acquire an easement in gross over a portion of the track maintained and owned by Respondent described on Exhibit "C" attached hereto and made a part hereof and an easement in gross over premises described on Exhibit "D" attached hereto and made a part hereof, and belonging to Respondent, The Burlington Northern and Santa Fe Railway Company.
3. Respondent has declined to sell such easements to the City at any cost.
4. Pursuant to the provisions of 735 ILCS 5/7-102, Petitioner seeks approval of the Illinois Commerce Commission to condemn an easement in gross over the trackway as described in paragraph 2 hereof subject to the limitations and regulations regarding appointment of costs and safety regulations imposed by the Illinois Commerce Commission.

WHEREFORE, Petitioner requests the following relief:

1. Approval of the Commerce Commission to initiate condemnation proceedings in Rock Island County, Illinois to acquire easements over the premises owned by Respondent, described in paragraph 2 of Petitioner's petition, subject to the rules and regulations of the Illinois Commerce Commission.
2. Such other and further relief as may be appropriate.

CITY OF ROCK ISLAND, ILLINOIS, a
Municipal Corporation, Petitioner,

By: 

Philip E. Koenig, Its Attorney

Konecky, Koenig, Kutsunis & Weng
1515 4th Avenue, Suite 301
Rock Island, Illinois 61201
(309) 786-3313

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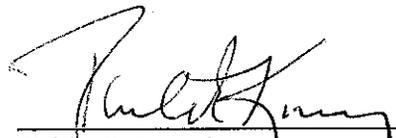
PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing was served by U.S. Mail with postage fully prepaid on this 15th day of November, 2002, by sending the same to the following persons at the addresses shown:

Burlington Northern Santa Fe Corp.
Attn: Elmer D. Bergquist
1670 S. Henderson
Galesburg, IL 61401

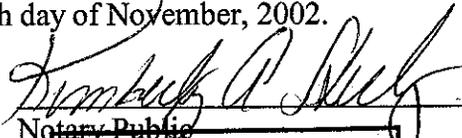
Illinois Department of Transportation
2300 S. Dirksen Parkway
Springfield, IL 62764

Michael L. Sazdanoff
Kenneth J. Wysoglad & Associates
The Burlington Northern and Santa Fe
Railway Company
200 W. Monroe Street, Suite 1002B
Chicago, IL 60606



Philip E. Koenig

Subscribed and sworn to before me this 15th day of November, 2002.



Notary Public



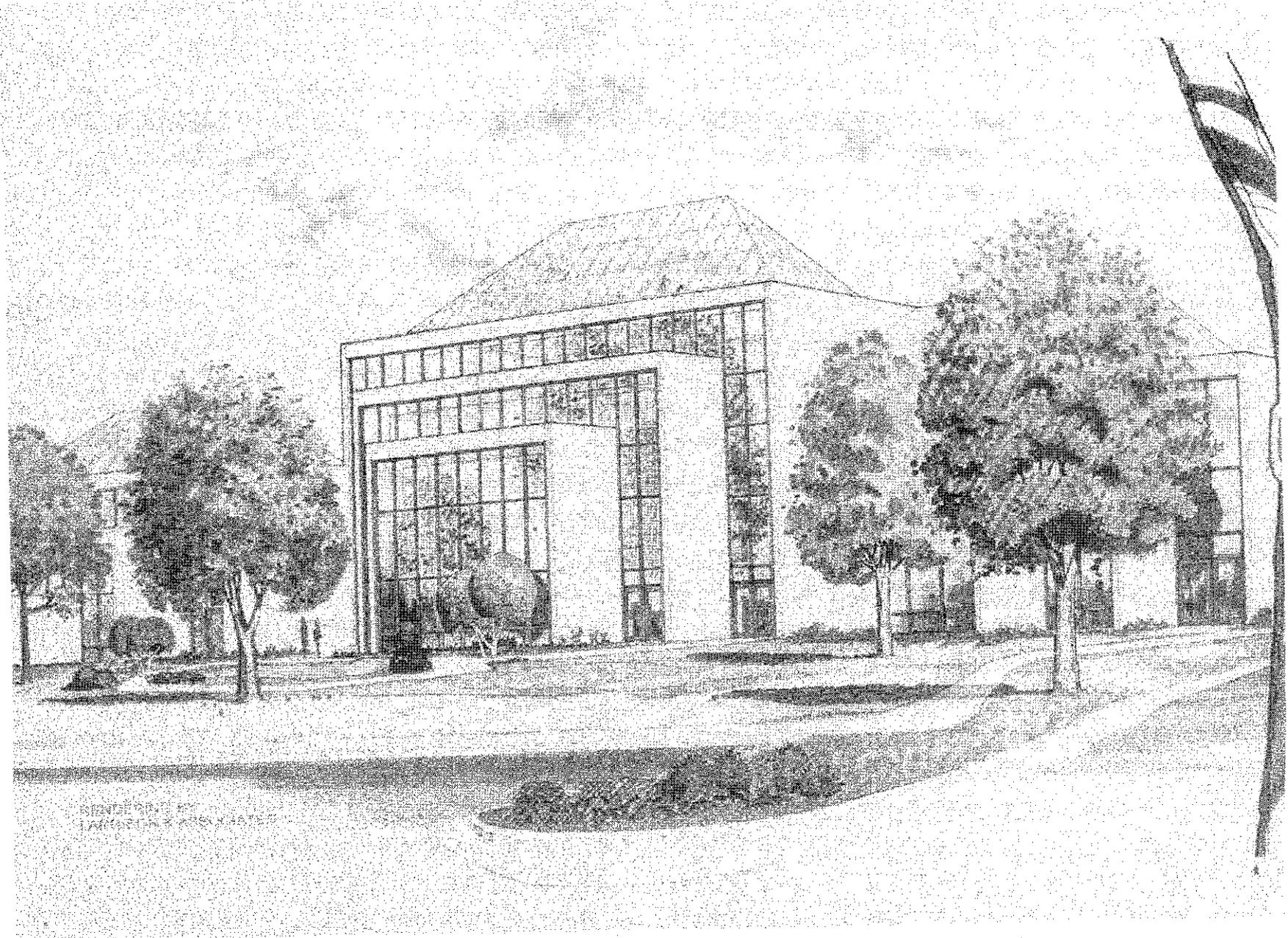


Exhibit "A"

MISSISSIPPI RIVER

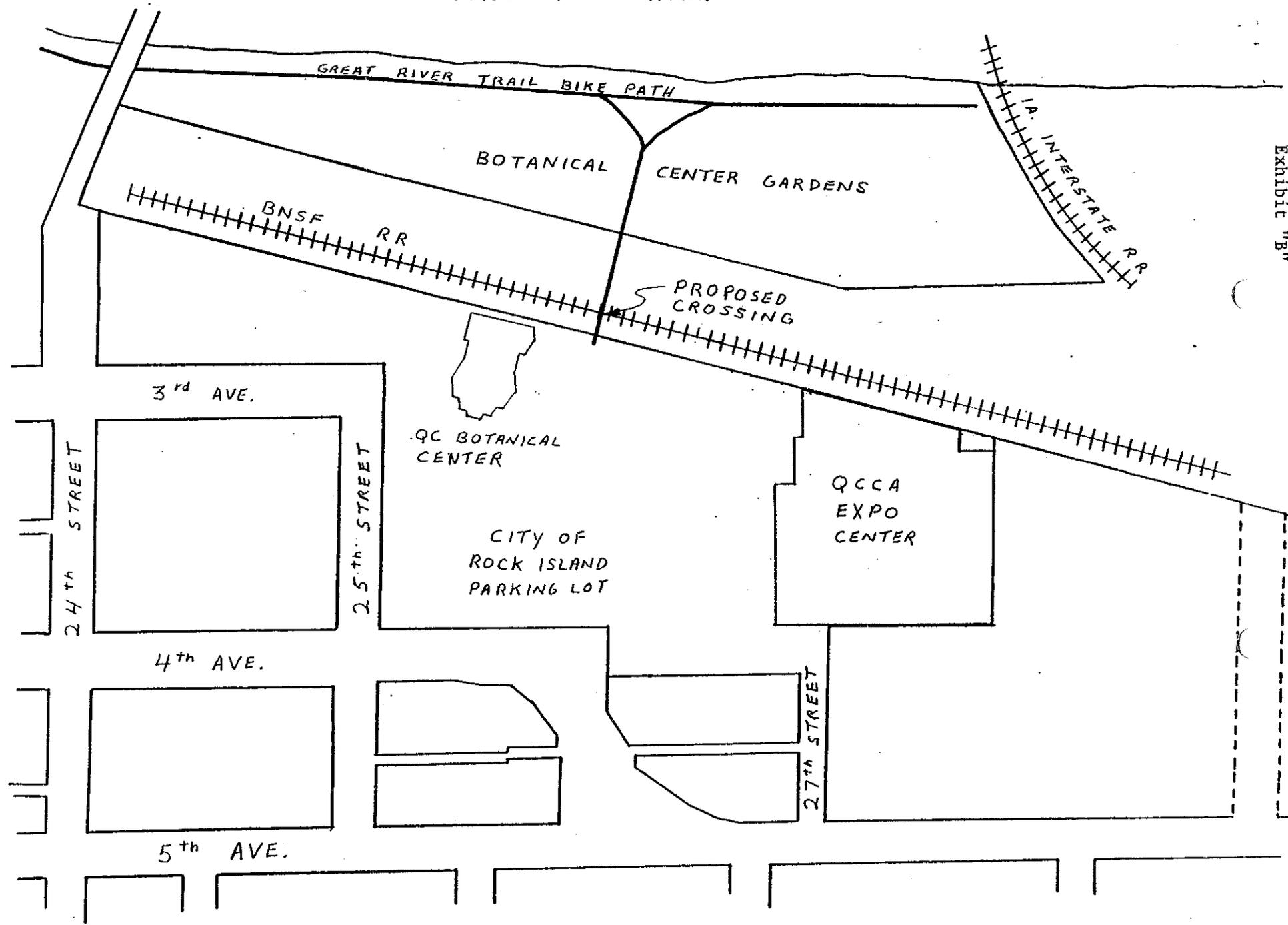


Exhibit "B"

EXHIBIT "C"

Description of Crossing Easement from Burlington Northern Santa Fe Railway Co.

A part of the Northwest Quarter (NW 1/4) of Section thirty-six (36), Township eighteen North (T 18 N), Range two West (R 2 W) of the Fourth Principal Meridian (4th P.M.), City of Rock Island, Illinois, said Permanent Easement being more particularly described as follows:

Commencing at the Southeast Corner of Lot 1 of QCCA Addition to the City of Rock Island, Thence North 89°55'30" West, assumed bearing, along the South Line of said Lot 1, also being the North Right of Way of the Burlington Northern Santa Fe Railway Co. a distance of 394.24 feet;

Thence North 73°11'35" West along said South line being said North Right of Way, a distance of 317.37 feet to the Point of Beginning;

Thence South 16°48'25" West perpendicular to said South line a distance of 75.00 feet to the South Right of Way of the Burlington Northern Santa Fe Railway Co.; Thence North 73°11'35" West along said South Right of Way a distance of 50.00 feet; Thence North 16°48'25" East, a distance of 75.00 feet to said South line; Thence South 73°11'35" East a distance of 50.00 feet to the point of beginning; containing 0.08609 acres more or less.

EXHIBIT "D"

Beginning at the Southeast Corner of Lot 1 of QCCA Addition to the City of Rock Island, Thence North $89^{\circ} 55' 30''$ West, assumed bearing, along the South Line of said Lot 1, also being the North Right of Way of the Burlington Northern Sante Fe Rail Way Co., a distance of 394.24 feet; Thence North $73^{\circ} 11' 35''$ West along said South line being said North Right of Way, a distance of 1142.43 feet to the East Right of Way of 24th Street; Thence South $31^{\circ} 49' 45''$ West along said East Right of Way, a distance of 34.17 feet; Thence South $73^{\circ} 11' 35''$ East, parallel with and 33 feet perpendicular to said North Right of Way a distance of 1626.15 feet; Thence North $0^{\circ} 00' 00''$ West, a distance of 153.64 feet to the point of beginning containing 1.7668 acres more or less.